

APPEAL NO. 031971
FILED SEPTEMBER 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 10, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The claimant appealed essentially on sufficiency of the evidence grounds. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs. The record indicates that the claimant sustained a compensable injury on _____, and the parties stipulated that the claimant reached maximum medical improvement with an impairment rating of 15% or greater; that the qualifying period for the first quarter started July 13 and ended October 11, 2002; and that the qualifying period for the second quarter started October 12, 2002, and ended January 10, 2003. The hearing officer determined that the claimant's decreased earnings during the relevant qualifying periods was a direct result of his impairment from the compensable injury. The claimant contends that he has met the good faith requirement of Rule 130.102(b)(2) because he has a total inability to work in any capacity.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer stated that the claimant provided four narrative reports from two different doctors, which each specifically explained how the claimant's compensable injury caused a total inability to work, but noted that a carrier-selected doctor reviewed a functional capacity evaluation of the claimant and in a letter dated July 25, 2002, stated that the claimant is able to return to work. The Appeals Panel has stated that whether another record shows an ability to work is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 000625, decided May 11, 2000.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo

1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer. We find no merit in the claimant's contention that the hearing officer failed to give sufficient consideration to this matter. Our review of the hearing officer's decision indicates that he considered all of the evidence submitted in reaching his ultimate determination.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FIREMAN'S FUND INSURANCE COMPANY/NATIONAL SURETY CORPORATION** and the name and address of its registered agent for service of process is

**KEVIN POTEETE
1201 ELM STREET, SUITE 4700
DALLAS, TEXAS 75270.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge